



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,263	01/12/2001	Gholam A. Peyman	41186	9206

1609 7590 12/29/2003

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.  
1300 19TH STREET, N.W.  
SUITE 600  
WASHINGTON,, DC 20036

EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 12/29/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
--------------------	-------------	-----------------------	---------------------

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

**DATE MAILED:**

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on October 14, 2003
- ☐ This action is **FINAL**
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.**

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-25 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☒ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- ☐ **Notice of Reference Cited, PTO-892**
- ☐ **Information Disclosure Statement(s), PTO-1449, Paper No(s).** \_\_\_\_\_
- ☐ **Interview Summary, PTO-413**
- ☐ **Notice of Draftsperson's Patent Drawing Review, PTO-948**
- ☐ **Notice of Informal Patent Application, PTO-152**

**- SEE OFFICE ACTION ON THE FOLLOWING PAGES -**

Art Unit: 3739

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-6, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Neefe, L'Esperance, Jr. ('913) and Simon. Bille et al ('586) teach a method of forming a pocket in the stroma using an ultrashort pulse laser. Simon teaches forming an intrastromal pocket and inserting a gel which is then allowed to set and can then be adjusted. Neefe teaches adjusting corneal curvature using a mold. L'Esperance, Jr. ('913) teaches ablating the corneal surface with an excimer laser to provide optical correction. It would have been obvious to the artisan of ordinary skill to employ the laser of Bille et al in the method of Simon, since this could form the intrastromal pocket much more precisely than the mechanical device of Simon and will not accidentally perforate the lamellae; or to employ the implant of Simon in the method of Bille et al ('586), since this would enable adjustment of astigmatism, and to employ a mold in the method of Bille et al ('586) or Simon for since this would be more precise and less cumbersome than the manual message method of Simon for the removal of excess gel thus producing a method such as claimed.

Claims 2, 3, 7-13, and 15-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon and L'Esperance, Jr. ('913). The teachings of L'Esperance, Jr. ('913), Simon, and Bille et al ('586) are substantially as set forth above. It would have been obvious to the artisan of ordinary skill to assemble these elements into a kit, since this would enable the performance of the obvious method as set forth above and because the elements are functionally unrelated as claimed; and to form the optical element as a ring,

Art Unit: 3739

since this is not critical and is the desired configuration of Simon, thus producing a kit such as claimed.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

A handwritten signature in black ink, appearing to read 'D. Shay', enclosed within a large, stylized oval or loop.

Shay/DI

November 24, 2003

DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330